

AMENDED IN ASSEMBLY FEBRUARY 23, 2012

AMENDED IN ASSEMBLY JULY 1, 2011

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE MAY 3, 2011

AMENDED IN SENATE MARCH 24, 2011

SENATE BILL

No. 829

Introduced by Senator ~~DeSaulnier~~ Rubio

February 18, 2011

An act to ~~amend Sections 148.5, 148.6, 148.8, 6309, 6317, 6600, 6601, 6601.5, 6602, 6603, 6610, 6625, and 6630 of, to add Sections 6319.6, 6603.1, 6603.2, and 6603.3 to, and to repeal Section 149.5 of, the Labor Code, relating to employment safety~~ *add Section 2503 to the Public Contract Code, relating to public contracts.*

LEGISLATIVE COUNSEL'S DIGEST

SB 829, as amended, ~~DeSaulnier~~ *Rubio*. ~~Division of Occupational Safety and Health: Occupational Safety and Health Appeals Board. Public contracts: public entities: project labor agreements.~~

Existing law sets forth the requirements for the solicitation and evaluation of bids and the awarding of contracts by public entities and authorizes a public entity to use, enter into, or require contractors to enter into, a project labor agreement for a construction project, if the agreement includes specified taxpayer protection provisions. Existing law also provides that if a charter provision, initiative, or ordinance of a charter city prohibits the governing board's consideration of a project labor agreement for a project to be awarded by the city, or prohibits the governing board from considering whether to allocate

funds to a city-funded project covered by such an agreement, then state funding or financial assistance may not be used to support that project, as specified.

This bill would additionally provide that if a charter provision, initiative, or ordinance of a charter city prohibits the governing board's consideration of a project labor agreement that includes specified taxpayer protection provisions for some or all of the projects to be awarded by the city, state funding or financial assistance may not be used to support any projects awarded by the city, as specified.

~~Existing law establishes the Division of Occupational Safety and Health in the Department of Industrial Relations to enforce employment safety laws. Existing law authorizes the division to conduct hearings, inspections, and investigations regarding alleged violations of employment safety laws and to issue citations to employers. Existing law establishes the Occupational Safety and Health Appeals Board in the department and prescribes procedures for the appeals board to hear and decide employer appeals of the division's enforcement actions.~~

~~This bill would revise and recast various provisions regarding citations issued by the department, the persons or entities who are authorized to participate as a party in an appeal before the appeals board, and the procedures that govern the appeals board in hearing and deciding appeals. The bill also would make other related clarifying and conforming changes.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2503 is added to the Public Contract
2 Code, to read:
3 2503. If a charter provision, initiative, or ordinance of a
4 charter city prohibits the governing board's consideration of a
5 project labor agreement that includes all the taxpayer protection
6 provisions of Section 2500 for some or all of the projects to be
7 awarded by the city, then state funding or financial assistance
8 shall not be used to support any projects awarded by the city. This
9 section shall not be applicable until January 1, 2015, for charter
10 cities in which a charter provision, initiative, or ordinance in effect
11 prior to November 1, 2011, would disqualify a project from
12 receiving state funding or financial assistance.

1 SECTION 1. ~~Section 148.5 of the Labor Code is amended to~~
2 ~~read:~~

3 ~~148.5. The appeals board, in adjudicating appeals, shall liberally~~
4 ~~construe the provisions of Division 5 (commencing with Section~~
5 ~~6300), as well as the standards and orders adopted by the Division~~
6 ~~of Occupational Safety and Health or the department pursuant to~~
7 ~~that division, and the standards and orders adopted by the~~
8 ~~Occupational Safety and Health Standards Board pursuant to~~
9 ~~Chapter 6 (commencing with Section 140) in order to promote~~
10 ~~safe and healthy working conditions for the working men and~~
11 ~~women of this state. A decision of the appeals board is final, except~~
12 ~~for any rehearing or judicial review as permitted by Chapter 7~~
13 ~~(commencing with Section 6600) of Part 1 of Division 5.~~

14 SEC. 2. ~~Section 148.6 of the Labor Code is amended to read:~~

15 ~~148.6. A decision of the appeals board is binding on the director~~
16 ~~and the Division of Occupational Safety and Health with respect~~
17 ~~to the parties involved in the particular appeal. The director and a~~
18 ~~party may seek judicial review of an appeals board decision~~
19 ~~irrespective of whether or not he or she appeared or participated~~
20 ~~in the appeal to the appeals board or its hearing officer. An affected~~
21 ~~person may seek judicial review of a final decision of the appeals~~
22 ~~board, but if the affected person did not participate in an appeal~~
23 ~~to the appeals board or its hearing officer, the affected person may~~
24 ~~seek judicial review if he or she seeks to enforce the right of the~~
25 ~~public to safe and healthy working conditions on behalf of working~~
26 ~~men and women in the state and the issues that form the basis of~~
27 ~~the affected person's petition for writ were considered by the~~
28 ~~appeals board. Nothing in this section is intended to eliminate or~~
29 ~~limit any other exceptions to any requirement under law that~~
30 ~~administrative remedies be exhausted before judicial action is~~
31 ~~sought.~~

32 SEC. 3. ~~Section 148.8 of the Labor Code is amended to read:~~

33 ~~148.8. The appeals board and its duly authorized representatives~~
34 ~~in the performance of its duties has the powers of a head of a~~
35 ~~department as set forth in Article 2 (commencing with Section~~
36 ~~11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the~~
37 ~~Government Code, except for Section 11185 of the Government~~
38 ~~Code. In adjudicating appeals, the appeals board is subject to and~~
39 ~~shall apply those rules and regulations adopted by the department~~

1 for the purpose of assisting in the enforcement of the provisions
2 of this code regarding occupational safety and health.

3 SEC. 4. Section 149.5 of the Labor Code is repealed.

4 SEC. 5. Section 6309 of the Labor Code is amended to read:

5 6309. (a) If the division learns or has reason to believe that an
6 employment or place of employment is not safe or is injurious to
7 the welfare of an employee, it may, on its own motion, or upon
8 complaint, summarily investigate the same with or without notice
9 or hearings. However, if the division receives a complaint from
10 (1) an employee, (2) an employee's representative, including, but
11 not limited to, an attorney, a family member, a union representative,
12 regardless of whether the representative's union has a collective
13 bargaining agreement with the employer, or a community,
14 employee, or legal organization, (3) a health or safety professional,
15 (4) a government agency representative, or (5) an employer of an
16 employee directly involved in an unsafe place of employment, that
17 the employment or place of employment is not safe, it shall, with
18 or without notice or hearing, summarily investigate the complaint
19 as soon as possible, but not later than three working days after
20 receipt of a complaint charging a serious violation, and not later
21 than 14 calendar days after receipt of a complaint charging a
22 nonserious violation. The division may investigate and conduct
23 an onsite inspection of a serious violation charged in a complaint
24 from a source other than those described in (1) to (5), inclusive,
25 of this subdivision before investigating any nonserious violation.
26 The division shall attempt to determine the period of time in the
27 future that the complainant believes the unsafe condition may
28 continue to exist, and shall allocate inspection resources so as to
29 respond first to those situations in which time is of the essence.
30 For purposes of this section, a complaint is deemed to allege a
31 serious violation if the division determines that the complaint
32 charges that there is a substantial probability that death or serious
33 physical harm could result from a condition which exists, or from
34 one or more practices, means, methods, operations, or processes
35 which have been adopted or are in use in a place of employment.
36 When a complaint charging a serious violation is received from a
37 state or local prosecutor, or a local law enforcement agency, the
38 division shall summarily investigate the employment or place of
39 employment within 24 hours of receipt of the complaint. All other
40 complaints are deemed to allege nonserious violations. The division

1 ~~may enter and serve any necessary order relative thereto. The~~
2 ~~division is not required to respond to a complaint within this period~~
3 ~~where, from the facts stated in the complaint, it determines that~~
4 ~~the complaint is intended to willfully harass an employer or is~~
5 ~~without any reasonable basis.~~

6 ~~(b) The division shall keep complete and accurate records of~~
7 ~~all complaints, whether verbal or written, and shall inform the~~
8 ~~complainant, whenever his or her identity is known, of any action~~
9 ~~taken by the division in regard to the subject matter of the~~
10 ~~complaint, and the reasons for the action, within 14 calendar days~~
11 ~~of taking any action. The records of the division shall include the~~
12 ~~dates on which any action was taken on the complaint, or the~~
13 ~~reasons for not taking any action on the complaint. The division~~
14 ~~shall, pursuant to authorized regulations, conduct an informal~~
15 ~~review of any refusal by a representative of the division to issue~~
16 ~~a citation with respect to an alleged violation. The division shall~~
17 ~~furnish the employee or the representative of employees requesting~~
18 ~~the review a written statement of the reasons for the division's~~
19 ~~final disposition of the case.~~

20 ~~(c) The name of a person who submits to the division a~~
21 ~~complaint regarding the unsafe condition of an employment or~~
22 ~~place of employment shall be kept confidential by the division;~~
23 ~~unless that person requests otherwise.~~

24 ~~(d) The division shall annually compile and release on its~~
25 ~~Internet Web site data pertaining to complaints received and~~
26 ~~citations issued.~~

27 ~~(e) The requirements of this section do not relieve the division~~
28 ~~of its requirement to inspect and ensure that all places of~~
29 ~~employment are safe and healthful for employees. The division~~
30 ~~shall maintain the capability to receive and act upon complaints~~
31 ~~at all times.~~

32 ~~SEC. 6. Section 6317 of the Labor Code is amended to read:~~

33 ~~6317. (a) If, upon inspection or investigation, the division~~
34 ~~believes that an employer has violated Section 25910 of the Health~~
35 ~~and Safety Code, Article 4 (commencing with Section 3550) of~~
36 ~~Chapter 2 of Part 1 of Division 4 of this code, Division 5~~
37 ~~(commencing with Section 6300) of this code, or any standard,~~
38 ~~rule, order, or regulation adopted pursuant to Chapter 6~~
39 ~~(commencing with Section 140) of Division 1 of this code, or any~~
40 ~~standard, rule, order, or regulation established pursuant to this code~~

1 regarding occupational safety and health, it shall with reasonable
2 promptness issue a citation to the employer. Each citation shall be
3 in writing and shall describe with particularity the nature of the
4 violation, including a reference to the provision of the code,
5 standard, rule, regulation, or order alleged to have been violated.
6 In addition, the citation shall fix a reasonable time for the
7 abatement of the alleged violation. The period specified for
8 abatement shall not commence running until the date the citation
9 or notice is received by certified mail and the certified mail receipt
10 is signed, or if not signed, the date the return is made to the post
11 office. If the division officially and directly delivers the citation
12 or notice to the employer, the period specified for abatement shall
13 commence running on the date of the delivery.

14 (b) A “notice” in lieu of citation may be issued with respect to
15 violations found in an inspection or investigation which meet either
16 of the following requirements:

17 (1) The violations do not have a direct relationship upon the
18 health or safety of an employee.

19 (2) The violations do not have an immediate relationship to the
20 health or safety of an employee, and are of a general or regulatory
21 nature. A notice in lieu of a citation may be issued only if the
22 employer agrees to correct the violations within a reasonable time,
23 as specified by the division, and agrees not to appeal the finding
24 of the division that the violations exist. A notice issued pursuant
25 to this paragraph shall have the same effect as a citation for
26 purposes of establishing repeat violations or a failure to abate.
27 Every notice shall clearly state the abatement period specified by
28 the division, that the notice may not be appealed, and that the notice
29 has the same effect as a citation for purposes of establishing a
30 repeated violation or a failure to abate. The employer shall indicate
31 agreement to the provisions and conditions of the notice by his or
32 her signature on the notice.

33 (c) Under no circumstances shall a notice be issued in lieu of a
34 citation if the violations are serious, repeated, willful, or arise from
35 a failure to abate.

36 (d) The director shall prescribe guidelines for the issuance of
37 these notices.

38 (e) The division may impose a civil penalty against an employer
39 as specified in Chapter 4 (commencing with Section 6423). A
40 notice in lieu of a citation may not be issued if the number of first

1 instance violations found in the inspection (other than serious,
2 willful, or repeated violations) is 10 or more violations.

3 (f) No citation or notice shall be issued by the division for a
4 given violation or violations after six months have elapsed since
5 occurrence of the violation, except that a citation may be amended
6 pursuant to Section 6603.2.

7 (g) The director shall prescribe procedures for the issuance of
8 a citation or notice.

9 (h) The division shall prepare and maintain records capable of
10 supplying an inspector with previous citations and notices issued
11 to an employer.

12 SEC. 7. Section 6319.6 is added to the Labor Code, to read:

13 6319.6. If an employer or employee contests the period of time
14 fixed for correction of a violation classified and cited as serious,
15 willful, repeated serious, or a failure to abate a serious violation,
16 any hearing on that issue shall be conducted as soon as reasonably
17 possible and shall take precedence over other hearings conducted
18 by the board.

19 SEC. 8. Section 6600 of the Labor Code is amended to read:

20 6600. (a) Any employer served with a citation or notice
21 pursuant to Section 6317, or a notice of proposed penalty under
22 this part, or any other person obligated to the employer as specified
23 in subdivision (b) of Section 6319, may appeal to the appeals board
24 within 15 working days from the receipt of the citation or the notice
25 with respect to violations alleged by the division, abatement
26 periods, amount of proposed penalties, and the reasonableness of
27 the changes required by the division to abate the condition.

28 (b) Any individual or entity described in subdivision (c) may
29 submit an appeal to the appeals board, within 15 working days of
30 actual notice of a citation or notice pursuant to Section 6308 or
31 6317, regarding the period of time fixed in the citation or order
32 for abatement.

33 (c) The appeals board shall permit any of the following to
34 participate as a party in an appeal by the employer pursuant to
35 subdivision (a) or to file an appeal pursuant to subdivision (b):

36 (1) An employee or his or her representative, as described in
37 Section 6309.

38 (2) A union that has a collective bargaining agreement with any
39 employer that covers the cited employer's place of employment.

1 ~~(3) A deceased worker's successor in interest, heir, beneficiary,~~
2 ~~or other representative.~~

3 ~~(d) The division is a party to all proceedings before the appeals~~
4 ~~board, whether or not the division has appeared or participated in~~
5 ~~a given proceeding.~~

6 ~~SEC. 9.— Section 6601 of the Labor Code is amended to read:~~

7 ~~6601.— If, within 15 working days from receipt of the citation~~
8 ~~or notice of civil penalty issued by the division, the employer fails~~
9 ~~to notify the appeals board that it intends to contest the citation or~~
10 ~~notice of proposed penalty, and no notice contesting the abatement~~
11 ~~period is filed by any party described in subdivision (b) of Section~~
12 ~~6600 within that time, the citation or notice of proposed penalty~~
13 ~~shall be deemed a final order of the appeals board and not subject~~
14 ~~to review by any court or agency. The 15-day period may be~~
15 ~~extended by the appeals board for good cause.~~

16 ~~SEC. 10.— Section 6601.5 of the Labor Code is amended to read:~~

17 ~~6601.5.— If, within 15 working days from receipt of a special~~
18 ~~order or action order by the division, the employer fails to notify~~
19 ~~the appeals board that he or she intends to contest the order, and~~
20 ~~no notice contesting the abatement period is filed by any party~~
21 ~~described in subdivision (b) of Section 6600 within that time, the~~
22 ~~order shall be deemed a final order of the appeals board and not~~
23 ~~subject to review by any court or agency. The 15-day period may~~
24 ~~be extended by the appeals board for good cause.~~

25 ~~SEC. 11.— Section 6602 of the Labor Code is amended to read:~~

26 ~~6602.— If an employer notifies the appeals board that he or she~~
27 ~~intends to contest a citation issued under Section 6317, or notice~~
28 ~~of proposed penalty issued under Section 6319, or order issued~~
29 ~~under Section 6308, or if, within 15 working days of the issuance~~
30 ~~of a citation or order, any employee or representative of an~~
31 ~~employee files a notice with the division or appeals board alleging~~
32 ~~that the period of time fixed in the citation or order for abatement~~
33 ~~is unreasonable, the appeals board shall afford an opportunity for~~
34 ~~a hearing. The appeals board shall thereafter issue a decision, based~~
35 ~~on findings of fact, affirming, modifying, or vacating the division's~~
36 ~~citation or order, and may modify the proposed penalty, if the~~
37 ~~penalty modification is not in conflict with any other section of~~
38 ~~this code or regulation of the department, or direct other appropriate~~
39 ~~relief.~~

40 ~~SEC. 12.— Section 6603 of the Labor Code is amended to read:~~

1 6603. (a) ~~The rules of practice and procedure adopted by the~~
2 ~~appeals board shall do all of the following:~~

3 ~~(1) Be consistent with Article 8 (commencing with Section~~
4 ~~11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, and~~
5 ~~Sections 11507, 11507.6, 11507.7, 11513, 11514, 11515, and~~
6 ~~11516 of, the Government Code, and shall provide affected~~
7 ~~employees or representatives of affected employees an opportunity~~
8 ~~to participate as parties to a hearing under Section 6602.~~

9 ~~(2) Provide parties with the opportunity to participate fully in~~
10 ~~any hearing, receive notices, be permitted to subpoena witnesses~~
11 ~~and documents at any time before the completion of the hearing,~~
12 ~~offer evidence, examine and cross-examine witnesses, and argue~~
13 ~~and submit briefs. Parties shall also have the right to participate~~
14 ~~fully in settlement discussions at the prehearing conference,~~
15 ~~hearing, or in any other appeals board proceedings where settlement~~
16 ~~may be reached.~~

17 ~~(3) Provide for the scheduling of hearings in a manner designed~~
18 ~~to minimize inconvenience to the division and all parties and~~
19 ~~witnesses who are required to attend the hearings, and for the~~
20 ~~completion of the hearings without significant lapses in time if the~~
21 ~~hearings are not completed within the scheduled time. The appeals~~
22 ~~board shall set the initial hearing dates, subject to change upon~~
23 ~~agreement of the parties within 30 days of the notice of the initial~~
24 ~~hearing date, and shall not grant subsequent continuances absent~~
25 ~~good cause.~~

26 ~~(b) The superior courts shall have jurisdiction over contempt~~
27 ~~proceedings, as provided in Article 12 (commencing with Section~~
28 ~~11455.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the~~
29 ~~Government Code.~~

30 SEC. 13. ~~Section 6603.1 is added to the Labor Code, to read:~~

31 6603.1. ~~(a) The Legislature finds and declares that it is the~~
32 ~~duty of the appeals board to further the purposes of Division 5~~
33 ~~(commencing with Section 6300), the standards and orders adopted~~
34 ~~by the division or the department pursuant to Division 5, and the~~
35 ~~standards and orders adopted by the Occupational Safety and~~
36 ~~Health Standards Board pursuant to Chapter 6 (commencing with~~
37 ~~Section 140 of Division 1), in order to promote safe and healthful~~
38 ~~working conditions for all working men and women in the state.~~
39 ~~The appeals board and its administrative law judges shall, in the~~
40 ~~conduct of hearings, gather evidence through oral testimony and~~

1 records that the board and its judges determine is best calculated
2 to fully ascertain the facts necessary to determine whether the
3 employer committed the violation or violations alleged in the
4 citation or whether the employer has a defense to the allegations.
5 Any party may object to questions propounded or evidence sought
6 by the appeals board or administrative law judge in the same
7 manner and subject to the same standards as if the appeals board
8 or administrative law judge were a party.

9 (b) It is the intent of the Legislature that hearings held pursuant
10 to this division be conducted in an informal setting that preserves
11 the rights of the parties. In conducting hearings, the appeals board
12 shall permit hearsay and opinion evidence, according to the weight
13 that is appropriate under the circumstances, call and examine a
14 party or any witness, and on its own motion may admit any relevant
15 and material evidence.

16 SEC. 14. Section 6603.2 is added to the Labor Code, to read:

17 6603.2. (a) The appeals board may, at any time before a
18 decision becomes final, regardless of whether the statute of
19 limitations has run, allow the division to add or amend a citation
20 or order if the amendment is consistent with the transaction or
21 occurrence contained in the original citation or order according to
22 proof presented. The appeals board may allow the employer to
23 amend, according to proof presented by the employer, the basis
24 of its appeal. Leave to amend shall be liberally granted if the factual
25 circumstances serving as the basis for the amendments have been
26 litigated by the parties.

27 (b) Each party shall be given notice of the intended amendment
28 and an opportunity to object on the basis of prejudice. If prejudice
29 is shown, the amendment shall not be granted. However, if the
30 prejudice can be remedied by a continuance of the hearing, a
31 continuance for further proceedings shall be granted in lieu of
32 denying the amendment.

33 SEC. 15. Section 6603.3 is added to the Labor Code, to read:

34 6603.3. Whenever a case is within the jurisdiction of the Bureau
35 of Investigations pursuant to Section 6315, or is being actively
36 investigated or prosecuted by a prosecuting attorney with
37 jurisdiction over a criminal case involving a citation for which an
38 appeal has been filed pursuant to Section 6602, the appeals board
39 shall continue any proceeding before it upon the written request
40 of the division, employer, or any prosecuting attorney with

1 jurisdiction over the case. In lieu of a continuance, the appeals
2 board may dismiss the employer's appeal with leave to refile within
3 15 calendar days of the completion of the criminal case.
4 Completion of the criminal case shall be deemed to occur on the
5 date of a verdict of not guilty or the date of sentencing after a
6 verdict or plea of guilty or no contest.

7 SEC. 16.— Section 6610 of the Labor Code is amended to read:

8 6610. (a) Any notice, order, or decision required by this part
9 to be served upon any person either before, during, or after the
10 institution of any proceeding before the appeals board, shall be
11 served in the manner provided by Chapter 5 (commencing with
12 Section 1010) of Title 14 of Part 2 of the Code of Civil Procedure,
13 unless otherwise directed by the appeals board. In the latter event,
14 the document shall be served in accordance with the order or
15 direction of the appeals board. The appeals board may, in the
16 circumstances addressed in the Code of Civil Procedure, order
17 service to be made by publication of notice of time and place of
18 hearing. Where service is ordered to be made by publication, the
19 date of the hearing shall be fixed more than 30 days from the date
20 the application was filed.

21 (b) The employer shall give notice of any appeal filed pursuant
22 to Section 6602 to its employees by posting the docketed appeal
23 form, participation notice, and notice of hearing at or near the site
24 of the alleged violation, or, if that is not practicable, at a
25 conspicuous place where it will be readily observable by employees
26 or at a location where employees report each day. The employer
27 shall provide notice to each union, if any, with which it has a
28 collective bargaining agreement. If the employer is cited as a
29 controlling employer pursuant to paragraph (3) of subdivision (b)
30 of Section 6400, it shall provide notice to the employers at the
31 place of employment on the dates of any alleged violations. If an
32 employee was injured, made ill, or killed as a result of the alleged
33 violation that is being appealed, the employer shall also provide
34 notice to the employee or, if the employee is deceased, the
35 employee's family.

36 SEC. 17.— Section 6625 of the Labor Code is amended to read:

37 6625.— The filing of a petition for reconsideration shall suspend
38 for a period of 10 days the order or decision affected, insofar as it
39 applies to the parties to the petition, unless otherwise ordered by
40 the appeals board. The appeals board upon the terms and conditions

1 that it by order directs, may stay, suspend, or postpone the order
2 or decision during the pendency of the reconsideration, except as
3 to requirements for abatement.

4 SEC. 18. Section 6630 of the Labor Code is amended to read:

5 6630. The findings and conclusions of the appeals board on
6 questions of fact are conclusive and final and are not subject to
7 review. Such questions of fact shall include ultimate facts and the
8 findings and conclusions of the appeals board. The appeals board
9 and each party to the action or proceeding before the appeals board,
10 and any person affected, shall have the right to appear in the
11 mandate proceeding. Upon the hearing, the court shall enter
12 judgment either affirming or annulling the order or decision, or
13 the court may remand the case for further proceedings before the
14 appeals board.